IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3792 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HITUBHAI HARIBHAI TANDEL

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 3792 of 2004

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MS ARCHANA RAVAL, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/08/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu has challenged the detention order dated 21.2.2004, by

which he is detained as a "bootlegger", under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the order, the petitioner has also been served with the grounds of detention.

2. In the grounds of detention, there is a reference about two criminal cases, which are registered against the petitioner under the Bombay Prohibition Act. It is alleged that, the petitioner is dealing in foreign liquor. The authority, after having been satisfied about the alleged illegal activities of the petitioner, and after reaching the subjective satisfaction, has detained him under PASA. The said detention order is challenged by the petitioner by way of this petition.

3. Learned advocate for the petitioner submitted that, two criminal cases are registered against the petitioner under the Bombay Prohibition Act. It is submitted that, from the aforesaid criminal cases, it cannot be said that the activity of the petitioner is such which is injurious to public health or that he has violated any public order by committing offence under the Bombay Prohibition Act. It is further submitted that the authority has not recorded any statements of the witnesses.

4. Learned advocate for the petitioner further submitted that the last case registered against the petitioner is of dated 6.12.2003, and as against that the detention order was passed on 21.2.2004 and, therefore, there is a delay of about more than two months' period in passing the detention order from the last registered offence. It is submitted that, in view of this long delay in passing the detention order from the last registered offence, the petitioner is required to be released on this ground.

5. In this connection, learned advocate for the petitioner has relied upon the decision of this Court in the case of Elesh Nandubhai Patel v. Commissioner of Police reported in 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21:-

> "para.21 In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course

true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppl. SCC 61."

6. So far as the aforesaid contentions are concerned, no affidavit-in-reply is filed by the authority controverting the said contention nor is any file produced before the Court. In such type of cases, normally, reply is required to be filed, controverting the averments made in the petition; otherwise, it would be presumed that the averments made in the petition are correct because they stand uncontroverted. In view of the said aspect also, the averments made in this behalf are required to be accepted. Since the averments are not controverted and also on the ground of unexplained delay in passing the detention order, this petition is required to be allowed.

7. In view of what is stated above, this petition is allowed. The order of detention dated 21.2.2004 is quashed and set aside. The detenu, Hitubhai Haribhai Tandel, is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J.)

syed/